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Attorney for Plaintiff,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANDRES GOMEZ, individually and on)	Case No.:
behalf of himself and all others)	CLASS ACTION
similarly situated,)	
Plaintiff,)	COMPLAINT FOR VIOLATIONS
vs.)	OF THE AMERICANS WITH
	DISABILITIES ACT, 42 U.S.C. §§
J. CREW GROUP, INC.,)	12101, et seq., CAL.FIN. CODE §
Defendant.)	13082, THE UNRUH CIVIL
	RIGHTS ACT, CAL. CIV. CODE
	§51, et seq., and THE CALIFORNIA
	DISABLED PERSONS ACT, CAL.
	CIV. CODE §§ 54-54.3
	Filed Electronically

1 Comes now, ANDRES GOMEZ (“Plaintiff”) on behalf of himself and all
 2 others similarly situated and alleges as follows:

3 INTRODUCTION

4
 5 1. Plaintiff Andres Gomez brings this action individually and on behalf
 6 of all others similarly situated against J. Crew Group, Inc. (“Defendant”), alleging
 7 violations of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et*
 8 *seq.*, (the “ADA”) and its implementing regulations, California Financial Code
 9 §13082, The California Unruh Civil Rights Act, California Civil Code §§ 54-54.3-
 10 The Disabled Persons Act.
 11

12
 13 2. Plaintiff is a blind individual. He brings this civil rights class action
 14 against Defendant for failing to design, construct, and/or own or operate Point Of
 15 Sale Devices (“POS Devices”) that are fully accessible to, and independently
 16 usable by, blind people.¹
 17

18
 19 3. Specifically, the POS Device in Defendant’s stores throughout the
 20 United States are not fully accessible to, and independently usable by, blind
 21 people. Instead, the POS Devices have flat touch screen surfaces with features that
 22 are not discernible to individuals who are blind or visually impaired.
 23
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 26

27 ¹ By “POS Device”, Plaintiff refers to the electronic device used by a
 28 customer at the point of purchase that allows the customer to pay for items
 with a debit, credit, or other electronic funds card.

1 4. To make a debit card purchase using Defendant's POS Devices, a
2 customer must enter their Personal Identification Number ("PIN"). However,
3
4 because a blind or visually impaired individual cannot discern the numerical
5 references displayed on the keypad of the POS Device, said individual does not
6
7 have the ability to independently make a debit purchase. Instead, the blind or
8
9 visually impaired consumer must divulge their PIN number in order to complete a
10 debit transaction.

11 5. Defendant's use of flat touch screen POS devices discriminates
12
13 against blind and visually impaired consumers in violation of the ADA, The
14 California Financial Code § 13082, The Unruh Civil Rights Act and The California
15 Disabled Persons Act.

16 6. POS Devices with tactilely discernible keypad surfaces-which are
17
18 independently usable by a blind or visually impaired individual-are readily
19
20 available and in fact used by a substantial percentage of retail merchants.

21 7. Plaintiff intends to continue to be a visitor of Defendant's stores, and
22
23 may desire to make a purchase in the future with his debit card. However, unless
24
25 Defendant is required to install ADA and California Financial Code § 13082
26
27 compliant POS Devices, Plaintiff will continue to be unable to independently make
28 payments for any purchases by debit card.

1 8. Therefore, on behalf of a class of similarly situated individuals,
2
3 Plaintiff seeks a declaration that Defendant's POS Devices violate federal and state
4 law as described and an injunction requiring Defendant to update or replace all
5 POS Devices that are in violation of the mandatory requirements of the ADA
6 and/or California Financial Code § 13082 so that they are fully accessible to, and
7 independently usable by, blind or visually impaired individuals. Plaintiff further
8 requests that, given Defendant's historical failure to comply with the ADA's
9
10 mandate over a period of many years, the Court retain jurisdiction of this matter for
11 a period to be determined to ensure that Defendant comes into compliance with the
12 relevant requirements of the ADA and to ensure that Defendant has adopted and is
13 following an institutional policy that will, in fact, cause Defendant to remain in
14 compliance with the law.
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18 **THE ADA AND ITS IMPLEMENTING REGULATIONS**

19
20 9. On July 26, 1990, President George H.W. Bush signed into law the
21 ADA, a comprehensive civil rights law prohibiting discrimination on the basis of
22 disability.
23

24 10. The ADA broadly protects the rights of individuals with disabilities in
25 employment, access to State and local government services, places of public
26 accommodation, transportation, and other important areas of American life.
27
28

1 11. Title III of the ADA prohibits discrimination in the activities of places
2 of public accommodation and requires places of public accommodation to comply
3 with ADA standards and to be readily accessible to, and independently usable by,
4 individuals with disabilities. 42 U.S.C. § 12181-89.
5

6 12. Defendant owns, operates, controls, and/or leases a place of public
7 accommodation.
8

9 13. Defendant's POS Devices, located in its retail stores, are not fully
10 accessible to, and independently usable by, blind individuals.
11

12 14. While Defendant has centralized management policies regarding its
13 POS Devices, those policies are inadequate, and Defendant's POS Devices
14 continue to be inaccessible to, and not independently usable by, visually impaired
15 individuals.
16
17

18 **JURISDICTION AND VENUE**
19

20 15. This Court has federal question jurisdiction pursuant to 28 U.S.C.
21 § 1331 and 42 U.S.C. §12188.
22

23 16. Plaintiff's claims asserted herein arose in this judicial district and
24 Defendant does substantial business in this judicial district.
25

26 17. This Court has supplemental jurisdiction pursuant to 28 U.S.C.
27
28

§ 1367, over Plaintiff's pendent claims under The California Financial Code § 13082, The California Unruh Civil Rights Act (California Civil Code §§51, *et seq.*), and The Disabled Persons Act (California Civil Code §§ 54-54.3).

18. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2) in that this is the judicial in which a substantial part of the acts and omissions giving rise to the claims occurred.

PARTIES

19. Plaintiff, Andres Gomez, is and, at all times relevant hereto, was a resident of the state of Florida. He has several family members in the Los Angeles area and travels there frequently to visit them. Plaintiff is and, at all times relevant hereto, has been legally blind and is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2), and the regulations implementing the ADA set forth at 28 C.F.R. §§ 36.101 *et seq.*, The California Financial Code § 13082, The California Unruh Civil Rights Act, California Civil Code §§ 51, *et seq.*, and California Civil Code §§ 54-54.3 – The Disabled Persons Act.

20. Defendant J. Crew Group, Inc. is a Delaware corporation headquartered at 770 Broadway, New York, NY 10003. Defendant is a public accommodation pursuant to 42 U.S.C. § 12181(7)(F).

VIOLATIONS AT ISSUE

1 21. In July 2014, Plaintiff visited Defendant's J. Crew stores located at 189
2 Grove Drive, Los Angeles, CA 90036, 3 Colorado Boulevard, Pasadena, CA 91105,
3 and 6600 Topanga Canyon Boulevard, Canoga Park, CA 91303.

4
5 22. Plaintiff attempted to make purchases with a debit card, but was unable
6 to make purchases independently because, at the time of the visits, Defendant's POS
7 Devices were not fully accessible to, and independently usable by, blind people, as
8 above described.
9
10

11 23. Based upon an investigation performed on Plaintiff's behalf, Plaintiff
12 alleges that a significant number of other POS Devices in Defendant's stores are
13 similarly not independently usable by the blind or visually impaired.
14

15 24. Defendant does not provide any auxiliary aids or services calculated to
16 make its POS Devices fully accessible to, and independently usable by, blind people.
17

18 25. As a result of Defendant's non-compliance with the ADA, 42 U.S.C.
19 § 12102(2), The California Financial Code § 13082, The California Unruh Civil
20 Rights Act, California Civil Code §§ 51, *et seq.*, and California Civil Code §§ 54-
21 54.3 – The Disabled Persons Act, Plaintiff and the Class, unlike persons without
22 visual impairments, cannot independently make a debit purchase at Defendant's
23 stores.
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1 26. Defendant's non-compliance threatens blind people with the loss of
2 their private banking information. Blind people who wish to make a debit
3 purchase at Defendant's stores have no choice but to reveal their private PINs to
4 others to complete the debit purchase.
5

6 27. Though Defendant has centralized policies regarding the management
7 and operation of its POS Devices, Defendant has never had a plan or policy that is
8 reasonably calculated to make its POS Devices fully accessible to, and
9 independently usable by, blind people.
10

11 28. Plaintiff has actual knowledge of the fact that Defendant's POS
12 Devices lack the elements required to make them fully accessible to, and
13 independently usable by, blind people.
14

15 29. As a blind individual, Plaintiff has a keen interest in whether public
16 accommodations that offer debit purchases through POS Devices are fully
17 accessible to, and independently usable by, the blind.
18

19 30. Plaintiff intends to return to a certain number of Defendant's stores to
20 shop and to ascertain whether they remain in violation of the ADA, 42 U.S.C. §
21 12102(2), The California Financial Code § 13082, The California Unruh Civil
22 Rights Act, California Civil Code §§ 51, *et seq.*, and California Civil Code §§ 54-
23 54.3 – The Disabled Persons Act.
24
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1 31. Without injunctive relief, Plaintiff will continue to be unable to
2 independently use Defendant's POS device in violation of his rights under the
3
4 ADA, 42 U.S.C. § 12102(2), The California Financial Code § 13082, The
5 California Unruh Civil Rights Act, California Civil Code §§ 51, *et seq.*, and
6 California Civil Code §§ 54-54.3 – The Disabled Persons Act.
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13
14 **CLASS ALLEGATIONS**

15 32. Plaintiff brings this class action on behalf of himself and all others
16 similarly situated pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of
17 Civil Procedure, on behalf of all legally blind individuals who have attempted, or
18 will attempt, to make a debit purchase with Defendant's POS Devices at its stores
19 throughout the United States.
20

21
22 33. The class described above is so numerous that joinder of all individual
23 members in one action would be impracticable. The disposition of the individual
24 claims of the respective class members through this class action will benefit both
25 the parties and this Court.
26
27
28

35. Common Questions of Fact and Law: There is a well-defined community of interest and common questions of fact and law affecting members of the class in that they all have been and/or are being denied their civil rights to full and equal access to, and use and enjoyment of, Defendant's facilities and/or services due to Defendant's failure to make its POS Devices fully accessible, and independently usable as above described.

36. Adequacy of Representation: Plaintiff is an adequate representative of the class because his interests do not conflict with the interests of the members of the class. Plaintiff will fairly, adequately, and vigorously represent and protect the interests of the members of the class and has no interests antagonistic to the members of the class. Plaintiff has retained counsel who are competent and experienced in the prosecution of class action litigation, generally, and who possess specific expertise in the context of class under the ADA.

1 the Class, making appropriate both declaratory and permanent relief with respect to
2 Plaintiff and the Class as a whole.

3
4 **FIRST CAUSE OF ACTION**

5 (Violation of 42 U.S.C. §§ 12181, *et seq.* – Title III of the Americans with
6 Disabilities Act)
7 (on behalf of Named Plaintiff and the Class)

8 38. Plaintiff incorporates by reference the foregoing allegations as if set
9 forth fully herein.

10
11 39. Section 302(a) of Title III of the Americans with Disabilities Act of
12 1990, 42 U.S.C. §§ 12101 *et seq.*, provides:

13
14 No individual shall be discriminated against on the basis of disability in the
15 full and equal enjoyment of the goods, services, facilities, privileges,
16 advantages, or accommodations of any place of public accommodation by
17 any person who owns, leases (or leases to), or operates a place of public
18 accommodation.

19 40. Defendant is a retail store and, therefore, a place of public
20 accommodation within the definition of Title III of the ADA, 42 U.S.C. §§12181
21 (7)(E).

22 41. Under Section 302(b)(1) of Title III of the ADA, it is unlawful
23 discrimination to deny individuals with disabilities, or a class of individuals with
24 disabilities, the opportunity to participate in or benefit from the goods, services,
25
26
27
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1 facilities, privileges, advantages, or accommodations of a place of public
2 accommodation.
3

4 42. Under Section 302(b)(1) of Title III of the ADA, it is unlawful
5 discrimination to deny individuals with disabilities or a class of individuals with
6 disabilities an opportunity to participate in or benefit from the goods, services,
7 facilities, privileges, advantages, or accommodations of a place of public
8 accommodation, which is equal to the opportunities afforded to other individuals.
9
10

11 43. Under Section 302(b)(2) of Title III of the ADA, unlawful
12 discrimination also includes, among other things:
13

14 A failure to make reasonable modifications in policies, practices, or
15 procedures, when such modifications are necessary to afford such goods,
16 services, facilities, privileges, advantages, or accommodations to individuals
17 with disabilities, unless the entity can demonstrate that making such
18 modifications would fundamentally alter the nature of such goods, services,
19 facilities, privileges, advantages, or accommodations; and a failure to take
20 such steps as may be necessary to ensure that no individual with a disability
21 is excluded, denied services, segregated, or otherwise treated differently than
22 other individuals because of the absence of auxiliary aids and services,
23 unless the entity can demonstrate that taking such steps would
24 fundamentally alter the nature of the good, service, facility, privilege,
25 advantage, or accommodation being offered or would result in an undue
26 burden;
27

28 44. Defendant has discriminated against Plaintiff and the Class in that it
has failed to make its POS Devices fully accessible to, and independently useable
by, individuals who are blind in violation of the Americans with Disabilities Act

1 42 U.S.C. § 12182(a) as described above, and therefore Plaintiff is entitled to
2 injunctive relief to remedy the discrimination.
3

4 45. Defendant has discriminated against Plaintiff and the Class in that it
5 has failed to provide auxiliary aids and services calculated to make its POS
6 Devices fully accessible to, and independently useable by, individuals who are
7 blind in violation of 42 U.S.C. §§ 12101, 12102(2), and 28 C.F.R § 36.101 *et seq.*
8 Providing the auxiliary aids and services mandated by the ADA would neither
9 fundamentally alter the nature of Defendant's business nor result in an undue
10 burden to Defendant.
11
12

13 46. Defendant's conduct is ongoing, and, given that Defendant has not
14 complied with the ADA's requirements that public accommodations make their
15 POS Devices fully accessible to, and independently useable by, blind individuals.
16 Plaintiff invokes his statutory right to declaratory and injunctive relief, as well as
17 costs and attorneys' fees.
18
19

20 47. Without the requested injunctive relief, specifically including the
21 request that the Court retain jurisdiction of this matter for a period to be
22 determined after the Defendant certifies that it is in full compliance with the
23 mandatory requirements of the ADA that are discussed above, Defendant's non-
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1 compliance with the ADA's requirements that its POS Devices be fully accessible
 2 to, and independently useable, by blind people is likely to recur.
 3

4 48. WHEREFORE, Pursuant to 42 U.S.C. § 12188 and the remedies,
 5 procedures, and rights set forth and incorporated therein Plaintiff requests relief as
 6 set forth below.
 7

8 **SECOND CAUSE OF ACTION**

9
 10 (Violation of California Financial Code § 13082)
 11 (on behalf of Named Plaintiff and the Class)

12 49. Plaintiff incorporates by reference the foregoing allegations as though
 13 fully set forth herein.
 14

15 50. CFC § 13082 states:

16 (a) Whenever a point-of sale system is changed or modified to include a
 17 video touch screen or any other nontactile keypad, the point-of-sale device
 18 that would include the video touch screen or nontactile keypad shall also be
 19 equipped with either of the following:

20 (1) A tactually discernible numerical keypad similar to a telephone
 21 keypad containing a raised dot with a dot base diameter between 1.5
 22 millimeters and 1.6 millimeters and a height between 0.6 millimeters and 0.9
 23 millimeters on the number 5 key that enables a visually impaired person to
 24 enter his or her own personal identification number or any other personal
 25 information necessary to process the transaction in a manner that provides
 26 the opportunity for the same degree of privacy input and output available to
 27 all individuals...
 28

51. California Financial Code § 13082 ("CFC § 13082") was passed in
 2005, but retailers were given four years, until January 1, 2010 to bring their stores

1 into compliance. Thus, tactile keypads are required at every check-out location in
 2 California with a flat screen point of sale device. The keypads must be
 3 permanently attached.
 4

5 52. Defendant is systematically violating CFC § 13082. Defendant has
 6 discriminated against Plaintiff and the Class in that it has failed to make its POS
 7 Devices fully accessible to, and independently useable by, individuals who are
 8 blind in violation of CFC § 13082 and therefore Plaintiff is entitled to injunctive
 9 relief to remedy the discrimination and cost of this suit.
 10
 11

12 **THIRD CAUSE OF ACTION**

13
 14 (Violation of California Civil Code §§ 51, *et seq.*- the Unruh Civil Rights
 15 Act)
 16 (on behalf of Named Plaintiff and the Class)
 17

18 53. Plaintiff incorporates by reference the foregoing allegations as though
 19 fully set forth herein.
 20

21 54. The California Unruh Civil Rights Act, California Civil Code §§ 51,
 22 *et seq.*, guarantees equal access for people with disabilities to the accommodations,
 23 advantages, facilities, privileges, and services of all business establishments of any
 24 kind whatsoever.
 25

26 55. Defendant is systematically violating the Unruh Civil Rights Act,
 27 California Civil Code §§ 51, *et seq.*, Defendant has discriminated against Plaintiff
 28

1 and the Class in that it has failed to make its POS Devices fully accessible to, and
2 independently useable by, individuals who are blind, in violation of the Unruh
3 Civil Rights Act, California Civil Code §§ 51, *et seq.*, and therefore Plaintiff is
4 entitled to relief to remedy the discrimination.
5

6
7 56. Defendant has discriminated against Plaintiff and the Class in that it
8 has failed to provide auxiliary aids and services calculated to make its POS
9 Devices fully accessible to, and independently useable by, individuals who are
10 blind, in violation of the California Unruh Civil Rights Act, California Civil Code
11 §§ 51, *et seq.* Providing the auxiliary aids and services mandated by the ADA
12 would neither fundamentally alter the nature of Defendant's business nor result in
13 an undue burden on Defendant.
14
15

16
17 57. Defendant's conduct is ongoing, and, given that Defendant has not
18 complied with the California Unruh Civil Rights Act requirements that business
19 establishments make its POS Devices fully accessible to, and independently
20 useable by, blind individuals, Plaintiff invokes his statutory right to declaratory and
21 injunctive relief, as well as costs and attorneys' fees.
22
23

24 58. Without the requested injunctive relief, specifically including the
25 request that the Court retain jurisdiction of this matter for a period to be
26 determined after the Defendant certifies that it is in full compliance with the
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1 mandatory requirements of the Unruh Civil Rights Act, 42 U.S.C. §§ 12101, *et*
2 *seq.*, that are discussed above, Defendant's non-compliance with the California
3 Unruh Civil Rights Act requirements that its POS Device be fully accessible to,
4 and be independently useable, by blind people is likely to recur.

5
6
7 59. Defendant is additionally violating California Civil Code § 51, in that
8 the conduct alleged herein constitutes a violation of various provisions of the
9 Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, as set forth above.
10 California Civil Code §51(f) provides that a violation of the right of any individual
11 under the ADA shall also constitute a violation of the Unruh Civil Rights Act.
12

13
14 60. The actions of Defendant were and are in violation of the Unruh Civil
15 Rights Act, California Civil Code §§ 51, *et seq.*, and therefore Plaintiff is entitled
16 to injunctive relief remedying the discrimination. Unless the Court enjoins
17 Defendant from continuing to engage in these unlawful practices, Plaintiff and
18 members of the Class will continue to suffer irreparable harm.
19
20

21 61. Plaintiff is also entitled to statutory minimum damages pursuant to
22 California Civil Code § 52 for each and every offense.
23

24 WHEREFORE, Plaintiff requests relief as set forth below.

25 **FOURTH CAUSE OF ACTION**

26 (Violation of Cal. Civ. Code §§ 54-54.3 – the Disabled Persons Act)
27 (on behalf of Named Plaintiff and the Class)
28

1
2 62. Plaintiff incorporates by reference the foregoing allegations as set
3 forth fully herein.

4
5 63. California Civil Code §§ 54-54.3 guarantee full and equal access for
6 people with disabilities to all accommodations, advantages, facilities, and
7 privileges of “all places of public accommodation” and “other places to which the
8 general public is invited.” Defendant’s stores containing Defendant’s POS
9 Devices throughout California constitute “places of public accommodation”, or
10 “other places where the public is invited” within the meaning of California Civil
11 Code §§ 54-54.3.
12

13
14 64. POS Devices constitute accommodations, advantages, facilities, and
15 privileges provided by Defendant to members of the public in California and are,
16 therefore, subject to the access requirements of California Civil Code § 54.1
17 applicable to “all places of public accommodation” and “other places to which the
18 general public is invited.”
19
20

21
22 65. Defendant is in violation of the right of blind individuals to full and
23 equal access to public places by denying full and equal access to POS Devices in
24 violation of California Civil Code §§ 54-54.3.
25
26
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67. As a result of Defendant's wrongful conduct, the individual named Plaintiff and the Class are entitled to statutory minimum damages under California Civil Code § 54.3 for each offense.

FIFTH CAUSE OF ACTION

68. Plaintiff incorporates by reference the foregoing allegations as if set forth fully herein.

1 70. A judicial declaration is necessary and appropriate at this time in
2 order that each of the parties may know their respective rights and duties and act
3 accordingly.
4

5 WHEREFORE, Plaintiff requests relief as set forth below.
6

7 **RELIEF REQUESTED**

8 WHEREFORE, Plaintiff prays for judgment as follows:
9

10 1. A Declaratory Judgment that at the commencement of this action
11 Defendant was in violation of the specific requirements of Title III of the ADA and
12 the relevant implementing regulations of the ADA, The California Financial Code
13 § 13082, the California Unruh Civil Rights Act, California Civil Code §§ 51, *et*
14 *seq.*, and California Civil Code §§ 54-54.3, *et seq.*, the Disabled Persons Act,
15 described above, in that Defendant took no action that was reasonably calculated to
16 ensure that all of its POS Devices were fully accessible to, and independently
17 usable by, blind individuals;
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21 2. A permanent injunction pursuant to 42 U.S.C. § 12188(a)(2) and 28
22 C.F.R. § 36.504 (a) which directs Defendant to take all steps necessary to bring its
23 POS Devices into full compliance with the requirements set forth in the ADA, and
24 its implementing regulations, so that the POS Devices are fully accessible to, and
25 independently useable by, blind individuals, and which further directs that the
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1 Court shall retain jurisdiction for a period to be determined after Defendant
2 certifies that all of its POS Devices are fully in compliance with the relevant
3 requirements of the ADA to ensure that Defendant has adopted and is following an
4 institutional policy that will in fact cause Defendant to remain fully in compliance
5 with the law;
6
7

8 3. An Order certifying the class proposed by Plaintiff under Fed. R. Civ.
9 P. 23(a) & (b)(2) and/or (b)(3), and naming Plaintiff as Class Representative, and
10 appointing his counsel as Class Counsel;
11

12 4. Damages in an amount to be determined by proof, including all
13 applicable statutory damages;
14

15 5. Payment of reasonable attorneys' fees, expenses, and costs of suit
16 pursuant to 42 U.S.C. § 12205 and 28 C.F.R. § 36.505;
17

18 6. Payment of costs of suit;

19 7. For pre-judgment interest to the extent permitted by law; and
20

21 8. The provision of whatever relief the Court deems just, equitable, and
22 appropriate.
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27 Dated: May 20, 2015
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Respectfully Submitted,

THE LAW OFFICE OF JASON L.
RIBAKOFF

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